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Subject:— Opinions under the Primary Education Act 1947

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C O N T E N T S.

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Office of the R.L.A.

Bombay Primary Education Act, 1947, Sec23(4)
Constitution of India, Article16(4), Reservation of posts for backward classes.

Clause(4) of article 16 of the Constitution is by way of an exception to the general principle of non-discrimination embodied in clauses(1)and(2)of the said article. In virtue of that clause, it would be open to the State to make any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State. In virture of the definition of the word'State' contained in Article 12, the State Government can make suitable provisions for the reservation of appointments or posts in favour of any backward class in the services under any local authority. Instructions 5 issued by the Government under sub-section(4) of section 23 of the Bombay Primary Education Act, 1947, for the selection of candidates for appointment as primary school teachers has the effect of reserving posts in favour of backwad classes and therefore that instruction, in so far as it relates to backwad classes, is covered by clause(4) of article 16. Under clause(4) of article 16 the provision can be made in favour of intermediate classes and therefore it would be necessary to omit referende to these classes from the instruction in question.

M.R.D.
29-6-56
C.4

Sd/-
12-1
Remembrancer of Legal Affairs.

U.R. to E.D.No.920 dated the 15th January 1951.

Bombay Primary EducationAct. 1947. Section12(2).

There is no substance in any of the points raised by the Chariman, District School Board, Dharwar. It is true that the School Board had powers to create permanent posts and to make substantive appointments to such posts. But in the present case the posts of Attendance Officers were created at the instance of Government on the distinct understanding that Government should bear the additional cost. While giving sanction to these posts, Government expressly stated that this staff was sanctioned for the purpose for a period of two years in the first instance, with effect from 1st April, 1947. This was accepted by the District School Board,Dharwar with the result that these posts could evidently be treated as posts created for only two years, that is to say temporarily for that period. If posts are created temporarily, the appointments to such posts would also be treated as temporary. Consequently, the District School Board, Dharwar, had no power to create these posts permanently and to make any substantive appointments to them. This disposes of the first two questions raised by the Chairman, District School Board, Dharwar.

2. Persons employed temporarily have as a matter of fact, no vested right to such posts since their appointments as well as the posts themselves can be terminated by afflux of time or even earlier for any valid reason. If so, there would be no legal objection to applying the qualifications prescribed under section 2(3)of the Bombay Primary Education Act, 1949 even to persons holding the temporary posts on the date on which this Act came into force. As pointed out by the R.L.A. in his last opinion No.3696 dated 15th April, 1949 there should be no legal objection to asking the staff Selection Committee to review the merits of the

candidates who have been temporarily appointed before the new Act came into force. The Election Committee can review the temporary appointments of Attendance can-revi Officers made Prior to the new Act came into force. Questions 3 and 4 raised by the Chariman, District School Board, Dharwar are, therefore, answered in the affirmative.

3. It is true that under section 12(2) of the Bombay Primary Education Act, 1947 it is obligatory for the School Board to take over the staff, including the temporary staff maintained by the local authority on the date on which the new Act came into force. But as stated above, temporary appointments can be terminated by the school Board on taking over a staff appointed to such posts. Question No.5 would not, therefore, affectmd the merits of the case.

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U.R.

M.R.D.
29-6-56
C.4

U.R.to E.D. No.1375 ,dated the 22nd January 1951.

Under section 4(13) of the Bombay Primary Education Act, 1947, casual vacancies including that of a chairman or vice-chairman during the term of a school board shall be filled for the remaining period by election, appointment or nomination as the case may be. Rule 9 of the Bombay Primary Education Rules provides for filling up of casual vacancies of members of a school board in accordance with the procedure prescribed in Schedule C by the appointment of a person satisfying the requirements of the class of vacancy. A person who is appointed to a casual vacancy shall hold office only so long as the councillor in whose place he is appointed would have held if the vacancy had not occurred. In the present case the councillor who had been appointed by the non-authorised municipalitie of the Sholapur District has ceased to be a member as he failed to attend the meetings of the Board as per rules in force. Ordinarily, therefore, the vacancy caused thereby is to be filled by the appointment of a member representing the non-authorised municipalities which constituted the constituency originally. It is true that by reason of merger of certain areas, that constituency of the non-authorised municipalites has been enlarged. But under section 4(15) an additional member has been appointed to represent the area added to the limits of the District (see Govt. notification No.S.96(13)dated 3rd March 1950). Consequently the additional area which has been merged in the Sholapur district has been represented already. The four non-authorised municipalities which appointed the member whose seat has now become vacant will alone be entitled to elect their representative to fill the vacancy and

the other non-authorised municipalites in the merged area being properly represented by an additional member appointed under section 4(15) and which did not form part of the original constituency, would not be entitled to vote for the election to fill the casual vacancy. The view taken by the D.P.I. appears to be correct.

R.T.K.
6-2

Addl. Secy. Sd/-
6-2

U.R. to R.D.No. 2417.dt 8.2.1951.

Bombay Primary Education, Act, 1947, section 24(2)

Bombay Primary Education Rules, 1949, rule 78.

The first question raised for the R.L.A.'s consideration is whether under rule 78 of the Bombay Primary Education Rules, 1949, the tribunal has power to enhance the punishment. Under section 24(2) of the Bombay Primary Education Act, 1947, "any person aggrieved by an order of dismissal, removal, reduction or any other order involving disciplinary action made under sub-section(1), may submit an appeal to a tribunal consisting of the Chariman of the School Board and the Educational Inspector of the Division. The tribunal shall follow the prescribed procedure for the disposal of its business"... Under rule 78 of the Bombay Primary Education Rules, one of the things that the tribunal has to consider while deciding the appeal is whether the penalty imposed by the Administrative Officer is excessive, adequate or inadequate and after so considering, the tribunal may pass such order as it thinks proper, either directing a fresh enquiry by the Administrative Officer, confirming, reversing, annuling or modifying the orderr passed by the Administrative Officer When the tribunal has to consider whether the punishment awarded by the Administrative Officer is adequate or inadequate, it presupposes the power of the tribunal to enhance the punishment if it is considered that the punishinet awarded by the Administrative Officer is considered to be inadequate. This inference is supported by Rolland Burrows in his "Words and Phrases Judicially Defined" Vol.III where it is stated. "One of the primary meanings of the word 'modify' is no doubt to limit or restrict but it also means to vary and there is authority that it may even mean to extend or enlarge." It is true that in Imperator v. Ramna Prima (4 Bombay 239) it was held that the word' modify does not include the power of enhancing the sentence.

That decision related to the interpreation of the provisions of the Criminal Procedure Code and will not apply to the present case particularly when rule 78 of the Bombay Primary Education Rules contemplates power of them tribunal to pass an appopriate order after considering the adequacy or inadequacy of the punishmentnx awarded by the Administrative Officer. In the circumstances it appears that the tribunal is competent to enhance the punishment under rule 78 if the punishment meted out by the Administrative Officer is considered to be inadequate.

2. In view of the reply to the first question, the second question does not survive.

Sd/

2-2-

Remembrancer of Legal Affairs.

M.R.D
29-6-56
C.4

U.R. to R.D. No. 2090, dated the 3rd February, 1951.

Legal Department.

It appears that the book called "Bhugol Parichaya", Part IV, by Kapadia was published by the General Book Depot in the month of February 1950 and it was noticed by Vera & Co., Publishers, Ltd. that "Bhugol Parichaya" contained several pages involving infringment of the copyright of their publication called "Desh Desh Varma". Consequently they instituted a suit No. 238 of 1950 in the High Court of Judicature at Bombay. Pending this litigation it appears that the General Book Depot had submitted the book for sanction to the Text Book Committee and Government by Government Resolution No. TBK.1050x dated 30th December 1950 sanctioned this as a text book for Standard IV for use in Gujarati Primary schools during the yearx 1951-52. The litigation betwenn the General Book Depot and Vera & Co. Publishers, Ltd. was settled and the former undertook to remove all the infringed lessons, matter, pictures, etc., from the next edition It appears from the letter of the Chairman, Kaira District School Board, that "Bhugol Parichaya", Part IV, published by the General Book Depot in December 1950 is the revised edition with many changes with the result that it is not the same which was sanctioned by Government by the aforesaid Government Resolution. Vera & Company Pubishers complain:

> "This book remained as a sanctioned book for the purposes of the Text Book Committee which was considering the prescription of books for the primary classes. Hence they must have considered the edition that involved the infringment of copyright. That very edition cannot be reprinted by the publishers under the deed of settlement. The publishers since then have published a new edition according to our deed of settlement. This edition, the Special Committee which was appointed by the Government of Bombay, has not considered at all and it cannotx be a sanctioned book for the purposes of the special Committee becuase it was never sent by them. Now our submission is that as the above book was an infringement of copyright of ours which was admitted by the publishers, it should not be prescribed by Government for any standards."

The Director of Public Instruction proposed that the book in question may be removed from the list of the text books. In the meanwhile the General Book Depot, the publishers of "Bhugol Parichaya" approached Government complaining against proposed withdrawal of the book. Secretary, Education Depart is not in favour of withdrawal. R.L.A. is requested to advise.

It is clear from the aforesaid statement of facts that the "Bhugol Parichaya" which was sanctioned by Government by the Government Resolution of December 1959 did contain several pages involving infringement of copyright of Vora and Company's publication entitled "Desh Desh Varima". The copies of the book which are now ready for sale are copied not of the orggimal edition which was sanctioned by Government butmf of the revised edition in conformity with the settlement arrived at between Vora & Company and the General Book Depot. It is, therefore, appamnt that there would be no legal objection to prescribing or using or selling the copies of the revised edition as this edition involves no infringement of the copyright. But the main question for consideration is, since the edition which was sanctioned by Government was the original edition which involved an infringement of the copyright and the copies of which cannot be sold, whether the sanction given by Government should extend to the revised edition. If the changes made are substantial and materially change the caracter of the book, the revised edition will be a new book and will not be covered by the sanction given. But the matter is one for the Administrative Department to consider. If Government considers such sanction should extend to the revised edition, it would be desirable that Government should amend the Government Resolution expressly stating that the sanction relates to the revised edition of "Bhugol Parichaya.".

Sd/-
16-2-

Additional Secretary to Government.

M.R.D.
30-6-56
C.4

U.R. to E.D.No. 2982 ,dated the 16th February, 1951.

Legal Department.

Bombay Primary Education Act, 1947, Section 20(3) and (4).

The words "terms and conditions" are generally used together. In section 20(3) the word used is only "terms." This may throw some doubt on its scope. (See Burrow's Words and Phrases Volume V- pages 276-277). However the intention of the legisaluture appears to be to give it an extended meaning. This view is strengthened by the fact that under sub-section(4) the Government is given the power to prescribe the duties to nbe performed by the staff. This will include the power to fix the headquarters of the staff from where such duties are to be performed.

Sd/-

Additional Secretary to Government.

M.R.D.
30-6-56
C.4

U.R.to E.D.No. 3748, dated the 3rd March 1951.

Legal

Under section 41, sub-section(2) of the Bombay Primary Education Act, 1947, every non-authorised municipality shall pay over annually to the District School Board or the authorised municipality, as the case may be, for the purposes of primary education such portion of the ratable value of the properties in the area of the municipality as may from time to time be fixed in this behalf by the Provincial Government etc. By G.R. No.7896,dated 22nd March 1949 Government has directed that every non-authorised municipality should pay over annually to the District school Board or the authorised municipality, as the case may be, for the purposes of primary education, 5 percent of the ratable value based on the annual letting value or 3.8 percent of the ratable value based on the capital val ue, as the case may be, of the properties in the areas of such non-authorised municipality. It is clear from this that the Majpipla municipality, which is a non-authorised Municipality is bound to pay either 5 percent of the ratable value based on the letting value or 3.8 percent of the ratable value based on the capital value as its contribution and it is immaterial whether that municipality has or has not levied the rate on the properties within its limits, for, the levy of rate by a municipality is discretionary and not obligatory under section 59, sub-section(1) of the Bombay District Municipal Act, 1901, In cases where a municipality has not chosen to levy a rate on buildings and lands, some machinery will have to be devised for the purpose of assessing the ratable value of the properties in such area for the purpose of assessing the municipality's liability to contribution under section 41, sub-section(1). Consequently, the fact that the Majapipla municipality has not yet

yet levied any rate on the buildings and lands within its areas would not free it from its liability to pay contribution under section 41 sub-section(1). If the municipality is agreeable, some contribution on an ad hoc basis may be recovered from it pending the framing of assessment list by it for the purpose of the levy of the rate, so that the ratable value of the lands and buildings on the basis of which the assessment list would be made, would be taken as the ratable value for the purpose of contribution under section 41 sub-section(1) and its liablity determined and the accounts settled. But if the municipality is unwilling to such a proposal the only course open for Government would be either to take steps to fix the ratable value of the properties and levy the contribution under section 41, sub-section(1) or to await the finalisation of machinery of the municipality for the levy of rate and then to fix the contribution retrospectively on the basis of the ratable value thus settled by the municipality.

Sd/-

Additional Secretary to Government.

M.R.D.
30-6-56
C.4

U.R. to E.D.No. 3302, dated the 22nd February 1951.

Bombay Primary Education Act, 1947. Sec.17(i)&18 (1).

Bombay Borough Municipalities Election Rules, 1950. Rule 21.

Appointment of Primary school teachers as polling officers.

Under rule 21 of the Bombay Borough Municipalites Election Rules, 1950 persons in the service of the Municipality cannot be appointed as presiding and polling officers. The Gadag-Betgari Municipality proposes that it may be allowed to utilize the services of the Primary School teachers as presiding and polling officers in the Municipal elections. Relying on the opinion of the R.L.A. No.4188 dated the 7th May, 1930 the Director of Local Authorities considers that there would be no objection to the appointment of Primary school Teachers as presiding and polling officers in view of the fact that the School Boards have a separate and independent existence, apart from the Municipalities. L.S.G. & P.H.D. is inclined to agree with the Director of Local Authorities and the R.L.A. is requested to advise.

2. The view taken by the Director of Local Authorities is not correct. Under the Bombay Primary Education Act, 1923, a School Board established by an authorized Municipality was considered already corporate on the basis of which the R.L.A. gave his last opinion No.4188 dated the 7th May 1938. With the passing of the new Bombay Primary Education Act, 1947, the legal position has altered. Under section 11 of the this Act 'a District School Board' of an authorized Municipality' does not appear to be a body corporate. Section 17(1) specifies the duties and functions of authorized Municipalities, one of which is to maintain an adequate staff of Assistant Administrative Officers, Supervisers, Attendance Officers, Clerks, Primary School teachers and inferior servants and other staff. The Municipal school Boards are merely authorized to manage and control all Primary Schools which vest in the

the authorized Municipalites(see sec.18(1)). It appears, therefore, clear that the Primary School teachers maintained by an authorized Municipality are the servants of such Municipality and they cannot be appointed as presiding and polling officers. The R.L.A.'s opinion of 1938,has, therefore, no application.

Sd/-
15-2
Additional Secretary to Government.

M.R.D.
30-6-56
C.4

U.R.to L.S.G. & P.H.D. No. 2964,dated the 16th February1951.

Legal Department.

It is true sub-rule(6) of rule 153 of the Bombay Primary Education Rules, 1949, requires the Director of Public Instruction to sanction the budgets before 15th March. This provision will however have to be deemed to be directory and not of a mandatory nature"where the prescrptions of a statute relate to the performance of a public duty or where the invalidation of acts done in neglact of them would work serieud general inconvenience or injustice to persons who have no control over those entrusted with the dty without promoting the essential aims of the Legislature, such prescriptions seem to be generally understood as mere instructions for the guidance and government of those on whom the duty is imposed or, in other words, as directory only." (Monteral Streat Railway Co. vs. Normandin'1917)A.C. 170 at page 174: Maxwell on Interpretation of Statutes, pages 379-380). "It has often been held, for instance, when an Act ordered a thing to be done by a public body or public officers and pointed out the specific time when it was to be done, that the Act was directory only and might be complied with after the prescribed time"(ibid). The failure of the Director of Public Instruction to sanction the budgets before the 15th March 1951 would,for these reasons, be a mere irregularity which would not affect their validity leading to indesirable results. There would therefore be no legal objection even if the Director of Public Instruction sanctions the budgets by the 1st of April i.e. after the prescribed date with such modifications as may be deemed necessary and the school boards cannot objects the such modifications and refuse to give effect to them. The view taken by Under Secretary, E.D.Dn is not correct.

Sd/-

Additional Secretary to Governor.

U.R. to E.D.No. 6585 dated the 20th March 1951.

M.R.D.
30-6-56
C.4

Legal Department.

The question raised for the consideration of the R.L.A. is whether under the Bombay Primary Education Act, 1947, the State Government has power to enhance the punishments inflicted by an Administratve Officer upon a primary school teacher.

2. The answer to the question raised appears to be in the negative. The power of the Administrative Officer to punish the staff under his control is derived from section 24 of the Bombay Primary Education Act, 1947. Sub-section(1) of that section empowers the Administrative Officer, subject to such general instructions as may be issued to him from time to time by the Director, to take all disciplinary action(including removal or dismissal) against the staff. Sub-section(2) gives to a person aggrieved by an order of dismissal, removal, reduction or any other order involving disciplinary action the right to submit an appeal to a tribunal consisting of the chairman of the school board and the Educational Inspector of the division. In the event of a difference of opinion between the members of the tribunal the appeal shall be referred to the Director. The previse to sub-section(2)gives to a primary school teacher who is a guaranteed teacher the right to make a further appeal to the State Government only against an order of removal or dismissal Except in this last mentioned case of appeal to it the State Government has no power to interfere in matters of punishment. Under the Act as it stands therefore it is not feasible for Government to enhance the punishment inflicted by the Administrative Officers as in the present case.

Sd/-
Additional Secretary to Government.

M.R.D.
30-6-56
C.4

U.R. to E.D. No. 312 confl dated the 26th March 1951.

Legal Department.

3085
14-2-51.

Submitted.

2. Additional District Magistrate, Kanara states that 41 villages where nyaya panchayats will try cases under clause(~~iv~~ II) of section 35 of the Bombay Primary Education Act, 1947 but in other villages where compulsory primary education is in force the D.M. will have to empower persons under clause (iii). He therefore presumes that the persons to be so authorised by the D.M.should be invested with magisterial powers by Govt. U.S.,R.D. states that the presumption made by the Addl. D.M. is correct. The R.L.A. is requested to advise.

M.R.D.
30-6-56
C.4

Office of the R.L.A.

Seen and returned.

The presumption made by the Additional District Magistrate, Kanara in his letter dated 19.1.1951x is correct. But this a provision will after the passing of the Bombay Separation of judicial and Executive functions Act be governed by the provisions of new section 38 A sought to be inserted in the Code of Criminal Procedure, 1898 by the same Act.

Sd/-
31-3

Remembrancer of Legal Affairs.

M.R.D.
30-6-56
C.4

U.R. to E.D. No. 5281 dated the 2nd April 1951.

Legal Department.

The question raised for the consideration of the R.L.A. is whether under the Primary Education Act, 1947, and the Bombay Primary Education Rules, 1949, an authorised Municipality can lay down the scales of pay for teachers working in private primary schools situate within the area of its jurisdiction.

2. Under section 16(1) of the Bombay Primary Education Act, 1947, read with paragraph 1 of Appendix IV to the Bombay Provincial Municipal Corporations Act, 1949, the Ahmedabad Municipal Corporation will be an authorized municipality within the meaning of the former Act. Under caluse(a)of sub-section(1) of section 17 of the Bombay Primary Education Act, 1947, it is one of the duties of an authorized municipality, subject to the provisions of the Act and the rules, tomake adequate provisions for granting aid to approved schools other than primary Schools maintained by the State Government or by a School Board or by an authorized municipality. Sub-section(2)of section 39 provides that the manner in which grant-in-aid is to be given to approved schools shall be prescribed by Rules. Sub-rule(1)of Rule 108 provides that a private school which has been recognized as an approved school shall be entitled to a grant, unless the school Board, on the recommendation of the the Deputy Educational Inspector, directs that such grant shall not be paid. Under the proviso to Rule 110 the School Board can refuse to grant aid to a private school if there is already in the locality an approved school, classfied as a publica public school which meets the needs of that locality. Under Rule 111(1) an approved private school which is once aided from the primary Education Fund shall be continued to be so aided unless the school Board, on the recommendation of the Deputy Educational Inspector, directs that such aid should cease. Under sub-rule(2)(c)of that Rule such a direction can be given by the school Board if the school

School Board if the school does not pay to its teachers the minimum scales of pay and allowances approved by the Director, in this behalf. It will be seen from all these provisions that the School Board of an authorized Municipality has no power to dictate the scales of pay which a private primary school should pay to its teachers. It can only under Rule 111(2)(c) decline to pay the grant if the scales of pay and allowances in respect of the teachers in such schools are not as approved by the Director in this behalf. The right or otherwise of the authorised Municipality to withhold the grant will depend whether scales and allowances in regard to the schools in question have been approved by the Director and whether the insistence of the authorized Municipality is for the payment of such scales and allowances or not.

Sd/-

Additional Secretary to Government.

M.R.D.
30-6-56
C.4

U.R. to E.D.No. 5625, dated the 9th April 1951.

Legal Department.

Bombay Primary Education Act, 1947. 1947. Section 38.

It appears that Government have appointed Ad-hoc Committees known as Filter Committees for each region to recommend the text books to be used in Primary Schools and such committees are presided over by the Educational Inspector of the division. "Dilpasand Urdu Readers" by Shrimati M.Khan were recommended as text books by the Text Book Committee specifying the prices at which the copies should be sold. Messrs. Joshi and Lokhande, thepublishers of these books, applied in November 1950 to the Educational Inspector for revising the prices of these bocoks. Pending their application Government, by their letter dated the 8th December 1950, wrote to them inviting their attention to the areas and prices mentioned against these books in the list and presuming that in respect of these books they would be able to arrange in good time adequate supplies in the areas and at the prices indicated, and requiring them to confirm itxbefore 15th December 1950. By their letter dated the 12th December 1950 Messrs. Joshi and Lokhande replied that the Educational Inspector, to whom they had applied forthe revision of the prices of their books had not been able to decide it and consequently their approval of the proposal of Government should be treated and taken subject to the decision of the Educational Inspector either in their favour or otherwise. Presuming that the acceptance of Government's offer by Messrs.Joshi and Lokhande was unconditional,Government by their Government Resolution No. TBK 1950,dated the 30th December 1950 issued in exercise of powers conferred by section 38 of the Bombay Primary Education Act, 1947 specifying for use in public primary schools in the areas and at the prices mentioned against them,

these-.....

these books. In the meantime the Educational Inspector, in consultation with this Committee, allowed an increase in the prices of these books, In view of para. 8 of the aforesaid Government Resolution of Government directing that the administrative officers should see that the books specified for their areas are not sold at prices higher than those fixed by Government, the Director of Public Instruction considers that the increase in the prices allowed by the Educational Inspector should not be permitted. The Director of Public Instruction however consideres that itx would not be advisable at this stage to cancel the specification of these books for the year 1951-52 and to prescribe other books in their place. The Education Department consideres that since the Educational Insector had increased the prices without consulting either the Director of Public Instruction or Government, and since Government had already fixed the prices of these books with effect from 30th December 1950, and it further directed that under no circumstances would any increase in the prices of text books concerned be approved by them, the increase in prices of Bilpasand Readers need not be approved. R.L.A. is requested to advise whether the views taken by Education Department is correct.

2. Government's letter dated the 8th December 1950 addressed to Messrs. Joshi and Lokhande publishers inquiring whether they would be able to arrange in good time adequate supplies in the the areas and at the prices indicated was in the nature of an offer.. The acceptance by Messrs. Joshi and Lokhande of that offer, as stated in their letter dated 12th December 1950, was subject to the decision of the Educational Inspector regarding the prices of the books for which they had applied. In other words, their accepta-

as conditional on the decision of the Educational Inspector regarding them regision of the prices asked for by them. This is apparent from the words"our approval please be treated and taken subject to that decision(the decision of the Educational Inspector) either in our favour or otherwise"; and the copy of the application to the Educational Inspector attached to their letter of 18th December 1950. The view taken by the Educational Department that the acceptance by Messrs. Joshi and Lokhande of Government's offer was unconditional is not correct. Under section 38 of the Bombay Primary Education Act, Government is given power to specify the subjects, curricula, books and standards of teachings of approved schools. There does not appear to be any power vesting in Government to control the prices of books ~~this~~ thus specified. However, the prices of books can be controlled indirectly by Government by refusing to specify the books unless the prices thereof were reasonable in the opinion of Government. In the present case these books have been already specified by Government in their Government Resolution dated the 30th December 1950 and the prices are also indicated against these books. If the publishers are unwilling to sell these books at the prices thus indicated, the only course open to Government would be to remove these book from the list specified by that Government Resolution, If Government considers it inadvisable to remove these books from the list at this stage for the year 1951-52, Government will have to allow these publishers to sell them at the prices revised by the Educational Inspector, since the acceptance of the offer of Messrs. Joshi and

Lokhande---

Lokhande, which was in the nature of a counter-proposal, was subject to such revision of the prices by the Educational Inspector.

Sd/-

Additional Secretary to Government.

M.R.D.
30-6-56
C.4

U.R. to R.D.No. 5188, dated the 31st March, 1951.

Office of the R.L.A.

There is no statutory duty imposed upon a deputy Education Inspector by any of the provisions of the Bombay Primary Education Act, 1947. The only duties imposed upon a Deputy Educational Inspector are those contained in rule 61(5)(b)(ii) and rule 61(7)(c) . The proposal of Education Department to impose the duties referred to in the above rules or some other inspecting officers is free from legal objection. Subclause(ii) of clause(b)of sub-rule(5) of rule 61 may however be recast as folllows:-

"(ii) make, on the basis of the remarks of the Deputy Educational Inspector, or where there is no Deputy Educational Inspector, on the basis of the remarks of an Inspecting Officer nominated by the Director in this behalf, recommendations to the School Board for the first recognition or the payment of grant-in-aid to a private school or for the withdrawal of such recognition or grant-in-aid;"

re

Mere substitution of the expression "Inspecting Officer" would not achieve the desired object in view of the provisions of rule 2(c)of the Bombay Primary Education Rules. The phraseology in the rule has been adopted from the wording of sub-section(1) of section 49 of the Act.

Sd/-
18-4

Remembrancer of Legal Affairs.

M.R.D.
30-6-56
C-4

U.R. to E.D.No. 369-conf1 datedx the 18th April, 1951.

Legal Department.

The question raised for the R&L.A.'s consideration is whether on the evidence available in these papers there is an overwhelming case for the conviction of Shri Shaikh.

2. The only evidence which appears to be on recordkm against Shri Shaikh is that of hand-writing expert. "Expert opinion must always be received with great caution, but perhaps none so with more caution than the opinion of hand-writing experts. It is well established that it is unsafe to base a conviction purely on expert opinion without substantial corroboration, and this rule has been universally acted upon and it has almost become a rule of law." (see Sarker's Law of Evidence, 8th Edution, P.445). There appears no evidence in the present case to corroborate the hand-writing expert's evidence. In the circumstances, it appears that the prosecution of Shri Shaikh is not likely to succeeded.

Sd/-

Additional Secretary to Government.

U.R.to P.&S.D.,No.425confl dated ,5th May 1951.

M.R.D.
30-6556
C.4

The question raised for the R.L.A's consideration are:- (1) whether Gegernment can interfere with or set aside the decision of a Staff selection Committee under the Bombay Primary Education Act, 1947,

(2) whether a Staff Selection Committee can meet more than once to review the appointments of the same officer and can change its opinion from time to time in the matter, and

(3) whether it is incumbent upon the Administrative Officer or Government to accept such recommendations made by the Committee from time to time.

2. Under section 23, sub-section(4) of the Bombay Primary Education Act, 1947, thepower to select candidates for appointments as assistant administrative officers, superivisers, attendance officers and teachers vests in the Staff Selection Committee, but the selection of candidates and teachers is required to be made in accordance with the instructions issued by the State Government. Sub-section (5) provides that the School Board or authorised municipality or the Administrative Officer , as the case may be, shall make the appointments of the candidates so selected in accordance with the directions given by the Staff Selection Committee. It is clear from these provisions that if the Selection Committee has selected candidates and teachers in accordance with the instructions issued by the State Government, it would be incumbent on the School Board or the authorised municipality or the Administrative Officer, as the case may be, to make appointments of the candidates so selected in accordance with the directions given by the Staff Selection Committee. The reply to the third question would, therefore, be "Yes, provided the selection has been made by the Staff Selection Committee in accordance with the instructions issued by the State Government." The acceptance of the recommendations made by the Selection

Committee.....

Committee by Government does not arise, since the power to appoint teachers vests in the Administrative Officer and the power to appoint assistant administrative officers, superivisors, attendance officers or clerks etc. vests in the District School Board in respect of which the orders can be issued by the Administrative Officer on behalf of the School Board(See rule 63 of the Bombay Primary Education Rules, 1949).

3. When once the Staff Selection Committee has selected candidates and teachers it will have no general power to review its own selections, unless the question has been referred to it again on the ground that the selections made were not in accordance with the instructions issued by the States Government. Also, the Staff Selection Committee may either of its own motion review the selection, if new material bearing on the merits and suitablity of the candidates, which was not in their possession at the time they made the selection, comes into their possession or is brought to their notice by the appointing authority.

4. Under section 23, sub-section(4)the Staff Selection Committee is to select candidates and teachers in accordance with the instructions issued by the State Government. If the recommendations have not been made in accordance with the instructions of the State Government ,the school Board or the authorised municipality or the Administrative Officer would be entitled to refuse to make appointments of the candidates selected by the Staff Selection Committee contrary to Government instructions, If, however, the School Board, authorised municipality or the Administrative Officer make the appointments of the candidates selected by the Staff Selection Committee even in contravention of the instructions issued by the State Government, it appears that section 51 would not be attracted, For, that section empowers the Director only to suspend execution of an act. If the act has already taken place or completed there can be no que-

of suspending it. But that section can be availed of if it be brought to the notice of the Director before the appointments are actually made that the selections made by the staff Selection Committee are in contravention of the instructions issued by the State Government. The Administrative Officer being a servant of the State Government is bound to consider whether the selections made by the Staff Selection Committee are in accordance with the instructions issued by the State Government. If the appointments are made even though the selections are made by the Staffx Selection Committee in violation of instructions issued by the State Government, Government can take action against Administrative Officer. The reply to the first question would, therefore, be in the affirmative; provided appointments have not a ready been made and the Director has taken action under section 51.

Sd/-

Additional Secretary to Government.

U.R. to E.D.No. 6879,dated the 30th April 1951.

M.R.D.
2-7-56
C.4

Legal Department.

Every district school board, under section 11 of the Bombay Primary Education Act, 1947, (Bom.LXI of 1947), is a corporation. Section 21 provides that for every school board there shall be an Administrative Officer who shall be the chief executive officerm of the board with the powers and duties as may be prescribed under the rules. Section 24(1) invests the adminstrative officer, subject to general instructions issued by the Director, with powers of promoting, transferring and taking disciplinary action against the staff of the school board maintained under section 20. Against any disciplinary action taken by the Administrative Officer an appeal is provided to an appellate tribunal consisting of the chairman of the school board and the Educational Inspector of the division. The Administrative Officer being the chief executive officer of the school board the school board will no doubt have the right of inspection of all the papers in connection with the execise of powers by the Administrative Officer and also to call for such information from him as the school board may deem necessary. But a a member of the school baord as such can claim no such general right. Any inspection that can be allowed to him must be sought by him from and through the school baard and not from the Administrative Officer directly.

2. The legal position of the rights of a corporater as against the corporation in respect of inspection of books of the corporation is stated by Halsbury in Volume VIII of Halsbury's Law of England at page 31 as follows:-

> "The books of a corporation are, generally speaking, open to inspection to the corporaters only for corporate purposes; but neither individual members nor a number of members of a corporation are entitled to demand a general insepction of the muniments.....

muniments, deeds, books and documents belonging to a corperation as a whole unless it can be shown that such inspection is required in connection with some definite and particular matter in dispute or controversy, between the members themselves or between the corporation on the one hand and the individual members on the other. The court will not order an inspection on general charges or merely for the purposes of discovering whether charges can be made.".

3. Whenever any member of the school board asks from the school board for inspection of any document the school board in granting the permission and issuing the necessary directions to the Administrative Officer. should bear in mind the test laid down by Lord Halsbury quoted above, that is to say, whether the inspection is required in connection with some definite and particular matter in dispute or controversy, btween betwenn the members themsleves or between the corporation on the one hand and the individual members on the other. Unless this test is satisfied the inspection of documents to any member or members should be refused by the school board whatever may be the nature of the document of which the inspection is sought.

Sd/-

Additional Secretary to Government.

M.R.D. U.R. to E.D.No. 7689,dated the 15th May 1951.
2-7-56
C-4

Legal Department.

By G.M.E.D.No. s.96(12), dated 15-4-1950 Govt, in exercise of the power conferred by Sec. 57 of the Bombay Primary Education Act, 1947,dissolved the District SchoolBoard of Satara District and established a District School Board for each of the two new districtsof Satara North and Satara South. The members of the said Boards were to hold office upto 19th April 1951. In view of the provisions of sub-section(3)of section 57 of the Act which limit the period of office of such members to one year, it is proposed to constitute the district school board in the manner provided insection 4(vide sub-section(4)of section 57). It appears that in one of the newly constituted districts namely, the Satara South District, there is no District Local Board. It is not therefore possible to elect the members on the District School Board as required by sub-section(5) of sec.4 Bombay Primaryx Education Act, 1947, In these cirumstances the R.L.A. is requested to advise how Goverament should deal with the difficulty.

2. The term of office of the members of the school Boards constituted by G.N.E.D.No.s.96(12),dated 15th April 1950, has expired on 19th April 1951. The view expressed by Under Secretary, Education Department, that it would not be possible to extend the term is correct, as under sub-sec.(3) of sec. 57 of the Bombay Primary Education Act, 1947, the members of the District School Board, reconstituted or established under the provisions of sub-sec.(2) shall hold office for such period not exceeding one year as the State Government by order specifies. Sub-section(4)provides that on the on the expiry of the period of office of the members under sub-sec.(3) the District School Board shall be constituted in the manner provided in sec.4. Under

sec.4 a school baord consists of members not less than 12and not more than 16 in number. Of these two to three shall be appointed by the State Goverament (vide sub-sec.(2)) and the rest shall be elected by the District Local Board or the authorised municipality (vide sub-sec(5)). As there is no District Local Board constituted for the Satara South District, there is no authority to elect that number of members on the District School Board. It seems however that it will be possible for the State Government to constitute a school Board having resort to sub-section(8)of sec.4. That sub-sec. provides that if the State Government is satisfied that any election cannot for any reason be held at all the State Goverament shall nominate from amongst persons who would have been qualified to be elected the required number of persons as members of the school baord and the persons so nominated shall be deemed to have been duly elected under sub-sec.(5) It would thus be legally feasible to constitute the school board for the Satara South District under sub-section (8) of section 4.

3. It is suggested for the consideration of Education Department that steps may be taken for the amendment of sub-section(3)of Sec.57 of the Bombay Primary Education Act, 1947 to provide for a period of 2 years for such reconstituted or established school boards as in the case of the analogous provision in Sec.131A(3) of the Bombay Local Boards Act, 1923 for reconstituted or established District Local Boards set up in similar circumstances.

Sd/-

Additional Secretary to Government.

M.R.D.A
2-7-56
C.4

U.R. to E.D.No. 7590,dated 14th May 1951.

Legal Departm.

It is true that under section 54 of the Bombay Primary Education Act,1947, Government has powers to issue directions to the District School Board for compliance notwithstanding anything contained in this Act. But the direction pruposed to be issued by the Secretary, Education Department, relates to the temporary appointment of teachers in one-yeacher- schools pending the permanent appointment of teachers from the selection list. The power to appoint teachers vests in the Administrative Officer and the School Board has nothing to do with it.(See rule 63 sub-rule(1), clause(b), sub-clause(i)). It, therefore, follows that the School Board having nothing to dowith the appointment of theachers, any direction, as proposed to be issued under section 54,would be ineffective and cannotk be complied with by the District School Board. The proposal made by Secretary, Education Department, would not ,therefore, be legally feasible.

Sd/-

Additional Secretary to Government.

M.R.D.
2-7-56
C.4

U.R. to S.D. No. 7884,dated 21st May 1951.

Legal Department

The view taken by the Under Secretary, Education Department, is correct. Section 12, sub-section(2) of the Bombay Primaryx Education Act, 1947, provides that : on the said date every district local board shall transfer and every district school bound shall take over and employ such primary school teachers and other persons as were employed by or under the district local board on the said date for the purposes of primary education on the same terms and conditions on which such teachers and other persons were employed by or under the said district local board. Consequently the incumbent of the post would be entitled to be continued on the pay in the scale which he was drawing by the new District School Board by virtue of section 12,sub-section(2). It is true that Government is given the power under section 20 to prescribe the rates of the pay of primary school teachers and other servants of the District school Board; but this is a general provision and would not affect these persons who are entitled to the benefit of section 12, sub-section(2).

Sd/-

Additional Secretary to Government.

U.R. to E.D.No. 5455,dated the 5th April 1951.

M.R.D.
2-7-56
C.4

Legal Department.

Rule XII provides for the cancellation of a certificate issued under rule XI in the event of there being any unauthorized alteration in such certificate. The certificate issued to V.F. Thakur in the present case not being one issued under rule XI cannot be cancelled under rule XII when these rules are brought into force.

Sd/-

for Additional Secretary to Government.

M.R.D.
2-7-56
C.4

U.R. to E.D,No. 494-confl,dated the 25th May 1951.

The District School Board, Surat, had established a separate provide fund for the teachers working in the English classes attached to the primary schools of the Board. Since the abolition of English classes with effect from 31-3-1950, these teachers have been absorbed as primary school teachers under the Board. The question raised for consideration is whether the accumulations to the credit of the teachers in the Provident Fund established for them can be transferred to the Provident Fund established by the School Board under the Bombay Primary Education Act, 1947, and the Bombay Primary Education Rules, 1949; and whether the teachers can be allowdd to subscribe to the latter Provident Fund.

2. As regards the latter part of the question viz., whether the teachers can be permitted to join the Provident Fund established by the District School Board, Surat, under the Bombay Primary Educatiin Rules, 1949, there seems no diffieulty. Rule 193 of the Bombay Primary Education Rules, 1949, authorizes a school Board to establish a provident fund for all its employees. As the teachers in question have been taken over as primary school teachers, they are the employees of the District School Board and can threfore join the provident fund established under rule 193.

3. As regards the question about them transfer of the accumulationsxto the credit of the teachers in the provident fund account it is true as stated by the Director of Public Instruction that the teachers were the employees of the Board prior to their absorption as primary school teachers. But a separate fund had been established by the District School Board and the rules made by the Board in this behalf (pages 11-23 ante) were passed by a resolution framed by that Board and were not sanctioned by Government. Under clause(d)of sub-section(3)of section 27 of the Bombay Primary Education Act, 1923, the local authority was competent to make regulations with the sanction of the Provincial Government for determining

the pay and terms of employment of inter alia the teaching staff. Rule 47(3) of the Bombay Primary Education Rules, 1924, also authorized the local authority to institute a provident fund for the teaching staff in accordance withthe regulations which may be framed in that behalf with the sanctionxx of Government. In this case the rules were not framed with the sanction of Government. The provident fund established by the School Board cannot therefore be deemed to be a provident fund established under the Bombay Primary Education Rules, 1949, (vide rule 193(1) of these rules). It would not, therefore, be legally feasible to transfer the accumulations to the credit of the teachers to their accounts in the new fund which they might have been allowed to join.

Sd/-

Additional Secretary to Government.

M.R.D.
2-7-56
C.4

U.R.to E.D.No. 8257,dated thex 25th May 1951.

Office of the R.L.A.

Article 25 of the Indian Constitution is based on the First amendment of the American Constitution as judicially ~~inyt~~ interpreted by the Supreme Courts of America. The First amendment of the constitution for United States of America provides that Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof. In interpreting this amendment the Courts in America have held that the freedom of religious belief and the freedom to act in the exercise of such belief cannot over-ride the interest of the peace, good order or morals of the society.(see Davis Vs.Beson 1890,(133U.S.333)). Such being the position in America Cooley in his Constitutional Limitations, Volume II, page 969 says,"No man in religious matters is to be subject to the censorship of the State or of any public authority and the State is not to inquire into or take notice of religious behief when the citizen performs his duty to the State and to his fellows, and is guilty of no breach of public morals". The same proposition is repeated by Cooley in his book on Constitutional Law (See Cooley on Constitutional Law 4th Edition, page 261). In the recent American case, West Virginia State Board of Education vs. Walter Barnette, 319 U.S. 624, the Supreme Court has made the following observations:-

"As Governmental pressure toward unity becomes greater, so strife becomes more bitter as to whose duty it shall be. Probably no deeper division of people could proceed from any provocation than from finding it necessary to choose what doctrine and whose program public educational officials shall compel youth to unite in embracing..... Compulsory unification of opinion achieves only the uniformity of the grave-yard." Again the Court observes "If there is any fixed star in our constitutional

constellation it is that no official high or petty can prescribe what shall be orthodox in politics, nationalism, religion or other matters of opinion or force citizens to confess by word or act there faith therein."

It is true that in America the freedom of conscience and the right freely to profess, practice and propagate the religion is to be subject to the good will and general wealfare of the community.(See Willis on Constitutional Law-page 505). Article 25 in the Constitution of India also provides that the freedom of conscience and the right freely to profess, practise and propagate religion is to be subject to public order, morality and health. In view of this provision in our constitution, the freedom and the right granted by Article 25 in respect of religion cannot transgress the limits enforced by law for the preservation of public order, safety and morals. But it does not follow from this that the State can act as a censor and direct that only particular course of religious instructions shall be followed in educational institutions. Clause(3)of article 28 implies that no obection can be taken to impart religious education in private schools. Rules 3 and 7 as proposed by the Director of Public Instruction would therefore be considered as infringing the fundamental right guaranteed by Article 25 and as being in consistent with Article 28 of the Constitution.

Sd/-
29-5

Remembrancer of Legal ~~Department~~ Affairs.

M.R.D. U.R. to E.D.No. 8417,dated the 29th May 1951.
2-7-56
C.4

Legal Department.

Bombay Primary Education Act, 947, sec. (1)(a).

A meeting at which there was no quorum is not a valid meeting and cannot be taken into consideration (see R.L.A.'s opinion No.3003 dated 21-5-1934). Consequently a meeting adjourned for want of a quorum cannot be taken into account for the purpose of determining the disability of a member under section 7(1)(a)of the Bombay Primary Education Act, 1947, for his absence from three consecutive meetings of the school board.

Sd/-

Additional Secretary to Government.

U.R. to E.D.No. 8459, dated the 29thx May 1951.

M.R.D.
2-7-56
C.4

Office of the R.L.A.

Under section 5, caluse(f) of the Bombay Primary Education Act, 1947, no person shall be elected, appointed or nominated a member of a school board who has directly or indirectly, by himself or his partner, any share or interest in any work done by order of, or in any contract entered into on behalf of, the school board or the electing local authority. Explanation (a)to the sub-section provides that a person shall not be deemed tohave incurred disqualification under clause (f)by reason of his having any share or interest in any lease, sale or purchase of any immoveable property or in an agreement for the same if before taking his seat as a member of the school board , he has obtained the sanction of the State Government to have such share or interest. It is clear from these provisions that a person who has any interest in any lease of his property to the school board does not initially incur any disqualification to contest the election but such disqualification or disability comes into operation only if beforetaking his seat as a member of the school board he has not obtained the sanction of the State Government to have such share or interest in the lease. In the present case, Shri Jayantilal Tribhuvandas and Shri Zunjarrao had rented their property to the school board several years before they were elected tox the district school board and they did not take the sanction of Government under Explanation(a)to section 5(1) before they took their seats. Consequently, they incurred the disability. It is true, that under section 7, sub-section(1) the disqualification contemplated is the disqualification incurred during the term of office of the members, that is to say, after they are elected as members of the school board, But as stated above, inasmuch as Shri

Zunjarrao .....

Zunjarrao and Shri Jayantilal did not take the sanction of Government before they took their seats, they would be deemed to have incurred the disqualification after they took their seats, that is to say, during their term of office. No subsequent sanction can be given by Government under this section. Consequently, section 7, sub-section(1) clause (b) would be applicable and the question of their taking the previous sanction under the previso to section 7, subsection(1) ,clause(b) would not arise. Since they have incurred the disqualification, their seats would be deemed to be vacant. Government may pass orders to that effect under section 7, sub-section(2).

Sd/-
5/6

Remembrancer of Legal Affairs.

M.R.D.
2-7-56
C.4

U.R. to E.D.No. 8844,dated the 5th June 1951.

LEGAL DEPARTMENT.

Primary Education Act,1947- Sec.10A.

Seen and returned.

A statutory committee appointed under section 19A of the Bombay Primary Education Act, 1947,shall have to establish a provident fund for its employees under rule 193 of the Bombay Primary Education Rules, 1949, unless a contrary direction has been issued to the Committee by Government under section 10A of the Act.

Sd/-

Additional Secretary to Government.

M.R.D. 2-7-56 C.4

U.R.to E.D.No. 9101 ,dated the 9th June 1951.

R.I.No. 10634
31-5-51

A vacancy has been caused on account of resignation of one Shri Shaikh Mohomed Rasul Azad, who was elected as a representative of the "minorities" within the meaning of rule 4 of Bom .P.E. Rules read with Sch.B. The President, D.L.B., Shahapur, considers that on the analogy of orders issued by the L.S.G.& P.H.D., in its letter No.174(3)/41468-C dated 3-10-1950, the vacancy in question canot be filled till the constitution of the School Board is duly revised. In para. 2 of his letter, the D.P.I., however, observes:-

"I think that in accordance withthe provisions of the Bombay Local Authorities Adult Franchise and Removal of Reservation of Seats Act, 1950, the vacancy in question cannot be filled. It would also appear necessary to issue a general Circular to all the School Boards that no elections should be held to fill vacancies of the Seats reserved for muslims and Indian Christians until the constitution of the S.B.concerned is revised in accordance with the provisions of theBom.L.A.A.F. & R. of S.Act, 1950. I request that Govt. be pleased to consider the position stated by me above and to issue the necessary orders at an early date."

The E.S.Office, however, states that the question of amending Schedule'A' to the Bombay P.E.Rules, 1949, prescribing the constitution of the School Boards is spepărately under consideration and that it is likely to take some time before Schedule 'A' is finally revised. It is stated that as the Bom.Local Authorities Adult Franchise and Removal of Reservation of Seats Act, 1950, is not made applicable to the School Boards and

P.T.O.

as the revision of Sch.A to the Bom.P.E.Rules is still under consideration, it will not be desirable to issue any general orders as desired by the D.P.I. and that so long as the Bombay P.E. Rules, 1949, are not amended, the present provisions should be considered effective for the purpose of holding by-election. R.L.A. is requested to advise whether E.D. office view is correct.

M.R.D.
-7256
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Legal Department.

Bom.Prim.Education Act,1947
Sec.4(13)
Bom.Pri,Educn, Rules,Rule 9(1)
By-election for vacancy of a member of "minorities."

Seen and returned.

The view expressed in the Education Department office note is correct.

Sd/-

Additional Secretary to Government.

M.R.D.
2-7-56
G.4

U.R. to L.D. No. 9174,dated the 11th June 1951.

Office of the R.L.A.

The first point raised by the Secretary, Education Department is that if a school is stated for the purposes of the Christian Community, recognition to such school should not be refused on the ground that there is another school in the place. Section 39(1)of the Bombay Primary EducationAct,1947, provides that every primary school other than a primary school maintained by the Provincial Government or by a school Board or by an authorised municipality which fulfils the conditions prescribed in this behalf shall be entitled to recognition as an approved school. Rule 103 of the Bombay Primary Education Rules, 1949, provides that every approved school shall conform to the conditions prescribed in Rules 122 to 140 of these Rules. Under Rule 107 recognition to a private school can be given if it satisfies the conditions specified therein. One of the conditions specified in that rule is that the School Board Should be satisfied about the need of the school in the locality. Rule 108 lays down the benefits of recognition, one of which is that a grant-in-aid shall be paid to such school. Rule 126(1)provides that an approved school shall be open to pupils of all castes and communities without any distinction. Reading these provisions together it appears that an approved school being entitled to grant-in-aid is required to be open to pupils of all castes and communities without any distinction. But a school can be given recognition as an approved school even though it does not claim or is not entitled to grants-in-aid; for section 39(1)of the Bombay Primary Education Act does not specify that only such schools as are entitled to grant-in-aid are entitled to recognition. Besides, under article 30(1)of the Constitution of India, all minorities whether based on religion or language shall have the right to establish and administer educational institutions of their choice, It is, therefore, clear that it is open to

to Christian Missions to start primary schools primarily or exclusively for the purposes of the Christian community and such schools are entitled to recognition as approved schools even though they are not entitled to grant-in-aid. All that article 29(2)of the Constitution of India requires is that no grant-in-aid out of the State funds shall be given to any educational institution unless such institution is open to all citizens without any distinction of religion,race, caste or language. It is,therefore, clear that recognition of a school as an approved school need not necessarily carry with it the right to a grant-in aid. Rule 128(1) of the Bombay Primary Education Rules will have, therefore, to be amended so that an approved school which receives a grant-in-aid shall be open to pupils of all castes and communities without distinction. Further, Rule 111 will have also to be amended to the effect that an approved school which is not open to all communities is not entitled to a grant-in-aid. If a school is started by a Mission for the Christian Community alone and it is not open to other communities, there appears no objection to the recognition of such school even through there there is another school in the place; for if the school started by the Mission fulfils all the conditions to entitle it to recognition as an approved school and does not claim any grant-in-aid, there will be additional educational educational facility in the locality without any additional burden on the State.

The second question raised by the Secretary, Education Department, is that Government should reserve the power to consider and decide whether a new Mission school is really necessary on educational grounds for the purposes of giving grant-in-aid.must be open-to-all As stated above, a Mission school to entitle to a grant-in-aid must be open to all communittes. When such school wants grant-in-aid , it is certainly competent for Government to consider

consider whether such school is really necessary on educational grounds. Consequently it is open to Government to reserve the power to consider whether such school should be recognised as an approved school for the purposes of giving grant-in-aid. In otherwords the rules must be framed so that there can be recognition as an approved school without the obligation of a grant-in-aid in the case of schools which are regarded as superfluous to the needs of a locality or which wish to confine admission to students of a particular community only.

Sd/-
28-6

Remembrancer of Legal Affairs.

M.R.D.
2-7-56
C.4

U.R. to E.D,No. 10274,dated the 28th June 1951.

Legal Department

The District School Board, Surat, proposes to add a new rule 7A to its pension Fund Rules. The E.D. office considers that addition of the proposed new rule 7A to the Pension Fund Rules would necessitate amendment or Schedule 'N' to the Bombay Primary Education Rules, 1949. R.L.A. is requested to advise whether the E.D. office view is correct.

2. Under rule 194(2) of the Bombay Primary Education Rules, 1949, with effect from 1st April 1949, the Pension Fund established by the District SchoolBoard, Surat, shall be administered and governed in accordance with the rules prescribed in Schedule N. Under rule 10 of the school Board Pension Rules in Schedule N, Government may, in special cases, modify or alter these rules to suit the special circumstances of a District school Board. Consequently, so far as the District school Board, Surat, is concerned, Government may sanction insertion of the proposed rule 7A in the Pension Rules in Schedule N by which the pension Fund of that school Board is governed, and it is not necessary to amend schedule N to the Primary Education Rules. The view taken in E.D. office note does not appear to be quite correct.

Sd/-

Additional Secretary to Government.

M.R.D.
2-7-56
C.4

U.R. to E.D.No. 10873, dated the 10th July 1951.

Legal Papers

9 The Director of Public Instruction in his lette. at page 5 ante states that the words"The Administrativ efficer being the chief executive officer of the School Board,", in para 1 of Additional Secretary's opinion No.7699,dated the 15th May 1951, appear to have been wrongly typed for the words "The Chairman". The E.D. considers that the presumption made by the D.P.I. is not correct. The R.L.A. is requested to confirm .

2. It appears that the confusion in this case has been caused because the copy of Additional Secretary's Opinion forwarded to the DP.I. with the E.D. letter No. PER- 1151/8340.-F, dated the 28th May 1951, had not been properly typed. From the quotation of thesewop words produced by the D.P.I. it appears that the words"the School Board" which occur twice in that sentence were not reproduced in the copy, thereby giving it a meaning which was not intended. The E.D.x may , therefore, forward a correct copy of the Additional Secretary's opinion so that there will be no confusion in the matter.

Sd/-

Additional Secretary to Government.

M.R.B.
2-7-56
C.4

D.R. to E.D. No. 11842 ,dated the 25th July 1951.

(Contd)

The question raised for the R.L.A.'s consideration is whether Government can issue directions under Section 54 of the Bombay Primary Education Act, 1947 requiring a District School Board to pay out of its Primary Education Fund a certain sum to the Direct school Building Committee.

The Bombay Primary Education Act, 1947, does not provide for the constitution of any District Building Committee. Such Committee appears to have been constituted for each District under the Bombay Primary Education Rules(See rule 2(d) of the Bombay Primary Education Rules, 1949). Under Rule 43(2) new primary school buildings for a school maintained by the District School Board shall be constructed in the District School Board area and extentions to the existing primary school buildings carried out by the District Building Committee of the District, in accordance with the Rules framed and instructions issued from time to time by Government. Under rule 147, grants for the construction of the new buildings are paid by Government to the District Building Committee. It appears from the G.R. E.D. No. 8441 dated 20th March 1950 that the District Building Committees are constituted by Government with a view to accelerate the scheme of constructing new buildings for Primary schools to attract contributions from the residents of the local areas. Under rule 160 a District School Board is not required to pay out of the Primary Education Fund and contribition to the District Building Committee for the erection of new buildings and carrying out extensive repairs to the existing buildings. Reading these previsions together, it appears that the District Building Committee is a body created by Govt. for the purposes of constructing newbu buidlings and carrying out rapairs to the existing buildings of the primary schools in the

District and the District School Board though it is the ultimate beneficiary, has no control over the District Building Committee and is not required to pay any contribution towards the expenditure incurred by the District Building Committee. However under Sec.13(2)(a) of the Bombay Primary Education Act, a District School Board is required to provide adequate accommodation and equipment for primary schools; which would include construction of new buildings. And the expenditure out of the Primary Education Fund over construction of such buildings would be permissible (See. Sec.45(1)). If it therefore clear that the payment out of the Primary Education Fund for construction and repairs of buildings for primary schools is legally permissible. However the D.S. Board has no control over D.B.Committee; nor is the latter the agent of the former. Consequently payments by D.S.Board out of P.E.Fund would not be permissible unless a direction is issued by Govt. for such payment under under sec. 64, which direction would absolvee the D.S.Board from liability for such payment. The view taken by Under Secy, E.D. is correct.

Sd/- R.T.K.
1-6

M.R.D.
3.7.56
C.4

Legal Department.

The legal Position as stated by the Under Secretary, Education Department, at pages 91 and 92 ante is correct. Only read " section 54" for "section 55" in paragraph 3 of his note.

Sd/-

Additional Secretary to Government.

M.R.D.
3-7-56
C.4

U.R. to E.D.No. 8849, dated the 5th June 1951.

Office of ...

Bombay Primary Education Act, 1947..

Section 57(1).

Reconstitution of District School Board, West Khandesh.

Section 57(1) of the Bombay Primary Education Act 1947, provides that "when during the term of office of the members of a district school board the limits of the district are on account of the formation of a new district under the Bombay Land Revenue Code, 1879, or for any other reason altered, the State Government may, by order published in the Official Gazette, dissolve such board from a date specified in the order and direct a district school board(i)to be reconstituted for the district of which the district school board has been dissolved, or (ii)to be established for a new district which has been constituted." Sub-section(3)of section 57 further provides that the members of the district school board reconstituted or established under the above provisions shall hold office for such period, not exceeding one year, as the State Government shall by order specify. The West Khandesh District was reconstituted by G.N.,R.D.No.3367/45 dated the 20th March 1950 but the changes directed by the notification were to take effect on and from the 1st May 1950. The term of the district school board also commenced from the same date. It is therefore possible to hold that the limits of the District have been altered during the term of the district school board, and it would consequently be competent to Government to take action for the reconstitution of the Board as provided for in sub-section(1)of section 57 of the Bombay Primary Education Act, 1947 and to fix its terms for such period not exceeding one year as provided in sub-section(3).

Sd/-
23-7

Remembrancer of Legal Affairs.

U.R. to R.D.No. 11909 ,dated the 26th July 1951.

M.R.D.
3-7-56
C.4

Office of the R.L.A.

Power of trying offence under P.E.Act.

Bombay Primary EducationAct, 1947. S.35(1)(iii)

The view taken by Home Department is not correct, Section 35 (1)(iii) refers to a person imposing the sentence of fine after conviction. This clearly means the power to impose the punishment can only be exercised by a person who exercises Magisterial powers. A person may not be appointed a magistrate, but under section 14 of the Criminal Procedure Code, he can be empowered to exercise Magisterial powers. In that case he is called a special magistrate. Under the Bombay Primary Education Act, 1947 the power of investing any person to exercise magisterial powers can be exercised by the District Magistrate. But this provision will be superseded when the Bombay separation of Judicial and Executive Functions Bill becomes a law.

Sd/-
4-7

Remembrancer of Legal Affairs.

M.R.D.
3-7-56
C.4

U.R. to H.D. No. 10604 ,dated the 4th July 1951.

Office of the R.L.A.

The Chairman, District Local Board, Broach, contends that the Bombay Primary Education Act, 1947, necessitates the sanction of Government only when additional schools are opened, but as the transfer of any of the existing schools from one place to the other does not add to the number of schools, it is within the competence of the District School Board to give any village a school vice any one closed provided that such shifting does not involve additional expenditure. The Secretary, Education Department, does not agree with this view. He is of the opinion that while shifting the location of a school within one and the same village may be a matter left left entirely to the discretion of the District School Board change of such location from one village to another is in fact and substance closure of the school at one village and and opening of a new school at the other village, and as such would attract the operation of rule 33 of the Bombay Primary Education Rules, 1949, under which previous sanction of Government has to be obtained by the District School Board. R.L.A. is requested to advise whether the Secretary E.D.'s view is correct.

2. Under rule 33 a District School Board can open a new primary school only with the previous sanction of Government. The word"new" as defined in Concise Oxford Dictionary means"not existing before, nor first made, brought into existence; fresh, further or additional." When a primary school is stated or brought into being in a village where previsouly there existed none, it would amount to "opening of a new school" in such area, and it is immaterial whether such a school is in addition to the existing number of schools or in place of one in some other village which is closed down. The contention of the District School Board, Broach, proceeds on an erroneous assumption that if a school in one village is closed down and another opened in another village, it is more transplantation or transfer of the school. Nor is the contantion of the District School Board, that because closing

down of a school in one village and starting of a school in another village does not involve additional expenditure therefore, Government sanction is not necessary is correct. In this connection attention is invited to sub-rule(1)of rule 104 which runs as follows:-

> "A District School Board shall not open a new Primary school or take over a private school or incur additional expenditure on primary schools maintained by it without the sanction of Government or an officer authorised by Government in this behalf."

There are no qualifying words inthat provision to show that Government sanction is necessary for opening a new primary school or taking over a privvate school only if it involves additional expenditure to the District School Board. Under rule 33 and 104(1)sanction of Government is necessary irrespective of the fact whether additional expenditure to the District School Board is involved of not. The view expressed by the Secretary, Education Department, is correct.

Sd/-
22-7

Remembrancer of Legal Affairs.

M.R.D.
3-7-56
6.4

U.R. to E.D. No. 1127, dated the 24th July 1951.

Legal Department.

Appointment of Superintendent.

Bombay Primary Education Act, 1947.
Sections 23(4)&24(1).

Bombay Primary Education Rules, 1949.
Rule 63(2)(b).

The material facts of this case are as follow:-

In 1948, a post of Office Superintendent was created in the District School Board, Belgaum and this post was filled in by the School Board by promotion of one Shri Pote who was holding the post of Head-clerk in the in School Board Office. The Director of Public Instruction took objection to this appointment on the ground that the authority to promote a member of the clerical staff of the School Board was vested in the Administrative Officer and not the School Board and accordingly Shri Pote was reverted to his former post and one Shri Angolkar who was holding the post of Accountant in the School Board's Office was promoted by the Adminstrative Officer to the Superintendent's post on 1-9-1948. This appointment was temporary and the appointment fell to be reviewed by the Staff Selection Committee of the Board in accordance with Government's instructions. The Staff Selection Committee accordingly met on 3-6-1950 to review the appointment and on that date passed a resolution resolving that a reference be made to the D.P.I. as to whether the appointment should be reviewed as per his circular No.770-28(D) dated 13-7-1948 or G.R. (Corrigendum) No. 7896 dated 5-7-1949. In reply the Staff Selection Committee was informed that the appointment should be reviewed in accordance with the instructions in G.R.E. & I.D.No. 7896 dated 20-4-1949. The Committee, thereupon, met again on 13th and 14th September 1950 and disapproved the appointment of Shri Angolkar for the reasons specified in its resolution. The Committee also directed the Administrative

Officer to place before it, at an early date, the claims of all suitable clerks in the office with his considered recommendations for final selection to the Superintendent's post. The Committee also placed on record its regret of the inability of the A.O. to to produce the confidential records for the year 1947-48 and 1948-49 which it was necessary for them to take into consideration. As the Committee has disppreved the appointment of Shri Angelkar, the A.O.has reverted him to his former post but at the same time asked him to hold the charge of the Superintendent's post in addition to his duties as an accountant.

2. In connection with these events it is observed by the Education Department as follows:-

"It is a fact that the Staff Selection Committ has powers to review the appointments made before the new Act came into force provided they were temporary. Accordingly, the Committee reviewed Shri Angelkar's appointment and disapproved it. But in the same meeting the Committee also dicided to select another person in place of Shri Angelkar. This does not appear to be regular. Nor does it seem that this action of the Committee was within its scope. A staff Selection Committee can review appointments of Office Superintendents in the D.S.B. Offices but it cannot, in the same meeting, proceed to select another person to that post and not particularly from the members of the staff only. Appointments of Office Superintendents can be made-

(i) either by promotion by the A.O.of some suitable member of the clerical staff of the school Board or if such a suitable member is not available;

(ii) by the Staff Selection Committee after inviting regular applications from outsiders also.

Thus the proceedings of the Committee meeting held on the 13th and 14th September 1959 were not in accordance with the instruct one issued by Government in that behalf and may, therefore, be set aside. The Committee may again be asked to review the appointment.

While reviewing the appointment in its meeting held on the 13th and 14th September 1950, the Committee did not take into consideration the confidential reports on the work of Shri Angelkar and Shri Pote. The A.O. failed to produce before the Committed these reports. The Committee may be asked to take them into consideration while reviewing the appointment. The A.O. and the E.I. who are members of the Committee may be told that it is their duty to guide the deliberations of the Committee properly and that due importance should be attached to the confidential records of the persons concerned."

3. The Legal Department is requested to advise whether the view expressed above inthe E.D. note is

correct and if so to State whether in view that the post of the Office Superintendent is at present vacant there is any legal objection to advise the A.O. to promote Shri Angolkar to the post of the Office Superintendent in exercise of the powers vested in him under Rule 63(2)(b) of the Bombay Primary Education Rules, 1949.

4. The points raised for consideration of the R.L.A. appear to be as follows:-

(1) Whether Committee's action in disapproving Shri Angolkar's appointment is valid;

(2) Whether it was proper for the Staff Selection Committee to ask the A.O. to submit recommendations for promotion to the post of office Superintendent; and

(3) Whether the A.O. can promote Shri Angolkar to the post of Office Superintendent in exercise of the powers vested in him by Rule 63(2)(b) of the Bombay Primary Education Rules, 1949.

5. As regards(1), Shri Angolkar was appointed temporarily to the post of the Office Superintendent, which post was itself a temporary post, by the Administrative Officer on 1-9-1948. It was, therefore, competent to the Staff Selection Committee to review his appointment in accordance with the instructions contained in Appendix D(II) to G.R.E.& I.D. No.7896 dated the 20th April 1949(cf.also R.L.A.'s opinion No. 3696 dated the 5th April 1949). The action of the Committee, in so far as it reviewed the appointment is therefore legal. The appointment of Shri Angolkar was made by the A.O. after taking into consideration the instructions given to him by the D.P.I. under section 24(of the Primary Education Act which required that due regard should be paid to seniority, qualifications, confidential records, general efficiency and capacity for responsible work in promoting an employee of the D.S.B. to the post of the Office Superintendent. As the promotion was made by the A.O. taking into consideration all these factors, the Committee should have also taken these factors into consideration. However,

confidential records were not made available to the committee and a decision was reached without taking them into account. This, however, does not invalidate the decision of the Committee as the Committee has been it fit to disapprove the appointment on other grounds. The decision of the Committee is, therefore, not invalid

6. As regards(2): the Committee in the same meeting directed the A.O. to place before the Committee claims of all suitable clerks in the office of the D.S.B. to enable it to make a final selection. E.D. has taken objection to this precedure and the question is whether this procedure was proper. E.D. considers that if selection was to be made from the members of the staff it is promotion which falls within the powersof the A.O. and not these of the Staff Selection Committee, and if the Staff Selection Committee wants to select one it will have to call for regular applications. In G.R., E,&I.D, No.7896 dated the 20th April 1949, which contains instructions under section 23(4) and section 24(1) of the Primary Education Act, it is directed thatx

> "If in the opinion of the Administrative Officer, there is no suitable person in the office of the School Board who can be promoted to the post of the Office Superintendent, the post should be filled by direct recruitment through the staff Selection Committee."

These instructions are clear and they go to show that if the post is to be filled in by promotion it is within the powers of the Administrative Officer and Staff Selection Committee comes into picture only if the post is to be filled by the direct recruitment. It is therefore obvious that if the post is filled by promotion, it is for the A.O. to take action in the matter. The power to make appointments by promotion is a statutorypower vesting in the Administrative Officer under section 24(1) of the Bombay Primaryx Education Act, 1947. The Committee's direction to the A.O. to submit claims in order to enable it to make a selection from the existing staff was therefore incompetent

Committee's resolution to this extent is invalid. It would follow that the selection of Shri Pote for appointment as Superintendent by the Selction Committee is also invalid as the Committee has nopower to make a selection for promotion.

7. As regards(3): It is true that the Administrative Officer can grant promotion to any member of the staff under Rule 63(2)(b) of the Primary Education Rules read with section 24(1), but as the promotion of Shri Angelkar made by him has been disapproved by the Selection Committee it would not be legally feasible for him to promote the same person again to the same post. The other eligible person for the post, namely, Shri Pote, is not found suitable by the Administrative officer. There is, therefore, no scope for promotion and the only course left open appears to be to ask the Staff Selection Committee to invite applications and to proceed to select the candidate. Perhps both Shri Pote and Angelkar may be allowed to take their chance inthe open competition.

Sd/-

Additional Secretary to Government.

M.R.D.
3-7-56
C.4

U.R. to E.D.No. 791-conf1,dated the 10th August 1951.

Legal Department.

Mis-use by a member of the District School Board of his influence with the Administrative Officer to favour teachers who had insured themselves through him would amount to disgraceful conduct within the meaning of section 9 of the Primary Education Act. If the Government are satisfied of such conduct on the part of a member of the District School Board, the Government can remove him from the school board after giving him a reasonable opportunity of being heard under section 9 of the Act. On his removal as a member from the School Board Shri Kandade shall also authmatically cease to be Chairman of the Board. For to be Chairman a person must necessarily be a member of the Board (See section 10(1).

Sd/-

Additional Secretary to Government.

M.R.D. U.R. to E.D,No. 13788,dated the 28th August 1951.

3-7-56
C.4

Office of the R.L.A.

Attention of Education Department is invited to R.L.A. opinion No. 106054, dated the 4th July 1951, a copy of which is appended herewith. The persons who have been invested with powers by the District Magistrate under section 35 of the Bombay Primary Education Act, 1947 would be deemed to be special Magistrates and no procedure being prescribed by the Bombay Primary Education Act to try the offence the procedure prescribed by the Criminal Procedure Code will apply. The provisions of Chapter VI in respect of the issue of processes to compel appearance will apply. Fines can be recovered in accordance with the provisions of sections 63 to 70 Indian Penal Code and the provisions of the Criminal Procedure Code-(See section 26 of the Bombay General Clauses Act, 1904).

Sd/-
11-8

Remembrancer of Legal Affairs.

M.R.D.
3-7-52
C.4

U.R. to E.D.No. 13072 dated 14th August 1951.

Legal Department.

As the Educational Adviser was not appointed by name but ex-officio, it is not necessary to fill that vacancy. As regards the Chairman of the Schools' Committee who was appointed ex-officio member of the Committee, the G.R., E.D.No.6943,dated the 3rd February 1950 might be modified and in place of the Chairman of the Schools' Committee, the Chairman of the Education Committee appointed in his place.

Sd/-

Additional Secretary to Government.

M.R.D.
3-7-56
C.4

U.R. to E.D.No. 13171,dated the 17th August 1951.

Legal Department.

Application of Pension Rules to staff of Dostrict School Boards.

Bombay Primary Education Act, 1947, Sec, 20(3) and Bombay Primary Education Rules 1949- Rule 196.

The Director of Public Instruction in his letter dated the 28th July 1951, has requested instructions whether the revised pension rules sanctioned in G.R., F.D. No.8315/33, dated the 20th December 1950 are applicable to the Primary Teachers whose services are pensionable and whose pensions are governed by the B.C.S. Rules. The Education Department(office) considered that the Director of Public Instruction's statement that the pensions of the Primary Teachers are governed by the B.C.S. Rules is not correct as the B.C.S. Rules were applied to the Teachers only in respect of certain specified matters by G.R. E &I.D. No.7896.dated the 29th April 1949 and pension was not included therein. The Secretary, Education Department, Hewever, thinks that except in cases where there is a special or specific provision by statute or statutory rule then teaching and non-teaching staff of the District School Boards would be in the same position as Government servants governed by the B.C.S. Rules in all respects. The Legal Department is requested to confirm.

2. Sub-section(1) of section 20 of the Bombay Primary Education Act, 1947, provides that every district school Board with the approval of the State Government and every authorised municipality shall maintain ~~in~~ an adequate staff of Assistant Administrative Officers etc., as may in the opinion of the State Government be necessary for the adminstration, management and control of the approved schools within its area. By sub-section (2)of section 20 it is provided that the staff maintained under sub-section(1)shall be servants of the District School Board or of the authorized municipality, as the case may be, and shall receive their pay, allowances etc. from the Primary Education Fund. Sub-section (3) then enacts that "the rates of the pay and allowances and terms of employment in respect of all the

members of the staff maintained by a District School Board and of the primary school teachers maintained by an authorised municipality shall be as fixed from time to time by the State Government." It is clear from this provision that the terms of employment of the staff of the District School Board and the Primary School Teachers maintained by authorised municipality will be such as may be fixed by Government frontime to time. In virture of of the powers conferred by this sub-section, Government have issued the necessary orders in G.E.,E.&I.D. No.7896dated the 29th April 1949. Under paragraph 6(1)of these orders it is directed that "the terms of employment in respect of the teaching and non-teaching staff of District School Board and the teaching staff of authorized municipalities ~~shall~~ shall be as ~~made~~ under :-

"(1) The provisions of the Bombay Civil Services Rules Shall apply mutatis mutandis in respect of (1)pay(2) joining time, (3)removal, suspension and dismissal(4)compulsory retirement, (5)maintenance of records of service, (6) additions to pay, (7)travelling allowance and(8)leave." By paragraph 7 of the same Government Resolution Bombay Civil Services, Conduct, Discipline and Appeal Rules are also made applicable to the teaching and non-teaching staff of the District school Boards and the teaching staff of the authorised municipalities. It is clear from this G.R.that all the Rules in the B.C.S.Rules is clear from this G.R. that all the Rules in the B.C.S. Rules will not apply to the staff of the school Boards or the municipalities and they will apply only in respect of matters specified though these specified matters cover up practically all the important aspects of the conditions of service. As regards pensions, it is true that the pension Rules in the B.C.S.Rules have not been applied by the G.R. but under Rule 196 of the Bombay Primary Education Rules, 1949, it is provided that the grant of pensions and gratuities to the members of the staff maintained by a District School Board and to primary school teachers maintained by an authorised municipality shall be determined in accordance withthe rules prescribed from time to

timexk by Government for similar classes of its employees. It therefore follows that the grant of pensions will also be governed by the Rules inthe B.C.S. Rules subject to the Provisions of sub-rule(2)of rule 196 of the P.E. Rules, 1949 and it is not necessary to apply specifically the Rules in the B.C.S. Rules by a Resolution as the P.E. Rules are statutory Rules framed by Government in exercise of the powers conferred by section 63(2)(f)of the Bombay Primary Education Act.

Sd/-

Additional Secretary to Government.

U.R.to E.D. through P.&S.D.and F.D.No.132270

dated the 18th August,1951.

M.R.D.
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